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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

GERALD ARMSTRONG,

Plaintiff,

vs.

DAVID MISCAVIGE and CATHY NORMAN, individuals; CHURCH OF SCIENTOLOGY INTERNATIONAL, a California corporation; the RELIGIOUS TECHNOLOGY CENTER, a California corporation; the SEA ORGANIZATION, a California based unincorporated entity; and the CHURCH OF SCIENTOLOGY OF TEXAS, a Texas corporation,

Defendants.
_____/

CASE NO. CV-N-97-00670 ECR (RAM)

DEFENDANT RELIGIOUS TECHNOLOGY CENTER'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, FOR CERTIFICATION PURSUANT TO 28 U.S.C. § 1292(b) AND FOR A STAY OF ALL PROCEEDINGS IN THIS COURT PENDING APPEAL

COMES NOW, Defendant Religious Technology Center ("**RTC**"), by its undersigned counsel, hereby respectfully moves this court for reconsideration of its order denying RTC's Motion to Dismiss on the "fugitive disentitlement doctrine ground" or, in the alternative, for certification pursuant to 28 U.S.C. § 1292(b) and for a stay of all proceedings in this Court pending appeal.

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MEMORANDUM OF POINTS AND AUTHORITIES

PRELIMINARY STATEMENT

On April 20, 1998, RTC filed a motion seeking dismissal of this action on the grounds that, *inter alia*, plaintiff Armstrong, as an indisputable fugitive from justice in California, should not be permitted to pursue his claims in this Court.[1] By Order entered on July 10, 1998 (the "**July 10th Order**"), this Court denied RTC's motion to dismiss, stating specifically with respect to the "fugitive disentitlement doctrine" ground for dismissal that: "[i]t may be true that Plaintiff sued in Nevada because he has an outstanding bench warrant in California, but Defendants offer no authority for the proposition that this alone disentitles him from maintaining a separate action in this District, nor have we found such authority."

With utmost respect for this Court, RTC believes that the Court has overlooked controlling and persuasive authority that fully supports RTC's invocation of the fugitive disentitlement doctrine in this action. Accordingly, RTC now moves for reconsideration of this Court's July 10th Order.[2] Alternatively, should this Court, upon reconsideration, continue to be of the view that the precedents discussed below do not compel a decision in RTC's favor, and noting that neither RTC's own research nor this Court's has disclosed any controlling authority *against* RTC's position, this Court should necessarily then conclude that the issue is one on which there is no controlling authority in this Circuit. Given that the issue is material and, if RTC is correct, immediately and fully dispositive of the case at bar, RTC also moves, in the alternative, for an order certifying the July 10th Order for immediate interlocutory appeal under 28 U.S.C. § 1292(b). Certification of this question for immediate appeal is proper under the statute because it involves a controlling question

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1/ Co-defendant Church of Scientology International ("**CSI**") also filed a motion to dismiss on identical grounds.

2/ By moving for reconsideration on the fugitive disentitlement doctrine ground alone, RTC is not abandoning, and does not waive, the other grounds for dismissal it advanced in its initial motion to dismiss -- namely, that this Court lacks subject matter jurisdiction over this action (because there is no diversity of citizenship here) and RTC is not subject to *in personam* jurisdiction in Nevada.

of law on which there is substantial ground for a difference of opinion, and immediate resolution would materially advance the ultimate disposition of the action. Finally, if this Court determines that certification under 28 U.S.C. § 1292(b) is warranted, RTC respectfully requests that this Court stay all proceedings in this action pending the Ninth Circuit's determination of the controlling issue of law on appeal.

FACTUAL AND PROCEDURAL BACKGROUND

The relevant facts are undisputed and were fully laid out in the initial moving papers submitted by RTC and CSI, including the April 17, 1998 Declaration of Andrew H. Wilson and the exhibits thereto. Specifically, plaintiff Armstrong, who was domiciled in California, fled to Canada after he was twice convicted of contempt, and in the face of post-conviction arrest warrants duly issued by a California state court. The warrants were issued against Armstrong as a result of his repeated violations of a judgment of permanent injunction entered against him by the Marin County, California Superior Court. In consequence, plaintiff is presently a fugitive from justice in California, is under two sentences of incarceration from the California courts, and is the subject of two fugitive arrest warrants. In fact, the California Court of Appeal dismissed Armstrong's appeal from the order of permanent injunction on the ground that, as a fugitive from justice, Armstrong should not be allowed to invoke the processes of the California courts.

On these facts, RTC moved to dismiss the instant action, asserting, *inter alia*, that as a fugitive from justice in a sister state, Armstrong should be denied access to this Court to pursue his claims in this State, both as a matter of standing and as a matter of comity. RTC's position is that if plaintiff had filed this case in a Nevada state court, that court would refuse to hear his claims and, because this is a diversity case, the result ought be no different simply because plaintiff filed the case in the federal district court.[3]

3/ Because plaintiff has invoked only diversity jurisdiction under 28 U.S.C. § 1332, this Court sits as a court of the State of Nevada in this case. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78-79 (1938).

RTC'S POSITION ON THE LAW OF FUGITIVE DISENTITLEMENT

The principal, controlling authority on the fugitive disentitlement doctrine is this Court's own decision in *United States v. Real Property Located at Incline Village*, 755 F. Supp. 308 (D. Nev. 1990) (hereinafter, "***Degen***") and the authorities cited therein, the Ninth Circuit's affirmance of this Court's opinion in *Degen*[4] and the authorities from other jurisdictions collected and approved therein, as well as the Supreme Court's ultimate decision in the *Degen* case.[5] An analysis and synthesis of these authorities yields the following principles pertinent to the application of the fugitive disentitlement doctrine *in this case*:

- Although the Supreme Court in *Degen* ultimately held that the doctrine should not be hastily applied against a fugitive *defendant* because of Fifth Amendment due process concerns, no such constraint is pertinent where, as here, the doctrine is sought to be applied against a fugitive who stands as a *plaintiff* seeking to invoke the assistance of a court;

- Because the doctrine is grounded in the need to command respect for the decisions and orders of the judiciary, the case for invoking it *here*, where plaintiff was adjudicated and sentenced in contempt *prior to his flight*, is far stronger than a situation where (as in *Degen*) flight occurs before any trial or judgment of conviction, so that the flight does not implicate the party's disrespect for a *court order* but, rather, merely disrespect for the prosecution and/or the legal system general.

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4/ *United States v. Real Property Located at Incline Village*, 47 F.3d 1511 (9th Cir. 1995), *rev'd sub nom. on non-relevant grounds*, *Degen v. United States*, 517 U.S. 820 (1996).

5/ *Degen v. United States*, 517 U.S. 820 (1996) (reversing order granting summary judgment to government in civil forfeiture proceeding because due process concerns precluded application of the fugitive disentitlement doctrine).

- While imposing the fugitive disentitlement doctrine in a *criminal* case, where personal liberty is at stake, may raise additional concerns, as the Ninth Circuit has held, no such concerns are present in the context of *civil* litigation.

As the authorities discussed *infra* show, application of the foregoing principles makes it perfectly appropriate, if not mandatory, for this Court to dismiss Armstrong's complaint under the fugitive disentitlement doctrine.

I. RECONSIDERATION ARE PROPER WHERE A COURT HAS OVERLOOKED RELEVANT CONTROLLING AUTHORITY

The federal district courts typically recognize that reconsideration of their orders is appropriate where a court has overlooked relevant authority on a given issue.[6] Although there is no local rule in this District which specifically addresses motions for reargument or reconsideration, this Court has, on numerous occasions, entertained motions for reconsideration on the asserted ground that the Court "neglected" relevant authority, or that the Court did not consider part of the legal theory advanced by a party. *See, e.g., United States v. Vaccaro,* 719 F. Supp. 1510, 1522 (D. Nev. 1989) (Reed, J.); *Sierra Diesel Injection Svc. v. Burroughs Corp.*, Inc., 651 F. Supp. 1371, 1373 (D. Nev. 1987) (Reed, J.). As is set forth in detail below, RTC respectfully submits that there is, in fact, controlling authority that compels application of the fugitive disentitlement doctrine in this action; authority which this Court overlooked. Therefore, RTC respectfully submits that this Court should grant RTC's motion for reconsideration.

II. THERE IS RELEVANT, CONTROLLING AUTHORITY THAT FULLY SUPPORTS THE APPLICATION OF THE FUGITIVE DISENTITLEMENT DOCTRINE IN THIS CASE

In *Degen*, this Court granted the government's motion for summary judgment in a civil forfeiture action on the ground that the defendant, who had fled the United States in the face

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6/ *See, e.g.*, U.S.D.C., S.D.N.Y., Loc. R. 6.3 (motion for reconsideration or reargument should set out the matters or controlling decisions counsel believes the court has overlooked); U.S.D.C, D.N.J., Loc. R. 5.1 (same).

of a criminal indictment, was precluded from defending the forfeiture action under the fugitive disentitlement doctrine. 755 F. Supp. at 314. In its thorough and thoughtful opinion, this Court discussed various courts' interpretations of the policy underlying the fugitive disentitlement doctrine. *Id.* at 310-12. Specifically, this Court cited and discussed the Supreme Court's opinion in *Molinaro v. New Jersey*, 396 U.S. 365 (1970) -- a case involving an appellate court's dismissal of a fugitive's appeal of his criminal conviction -- in which the Supreme Court unequivocally "announced that an individual should not be able to call upon the resources of a court to determine his claims when he flouts that court's power to prosecute him." *Id.* at 311. This Court further noted the Ninth Circuit's holding that "the [disentitlement doctrine] should apply *with greater force in civil cases* where an individual's liberty is not at stake." *Id.* at 310 (citing *United States v. $129,374 in U.S. Currency*, 769 F.2d 583, 588 (9th Cir. 1985), *cert. denied*, 474 U.S. 1086 (1986)) (emphasis in original). The Court also discussed the persuasive authority from the Second Circuit in *United States v. $45,940 in U.S. Currency*, 739 F.2d 792, 797 (2d Cir. 1984), in which the court invoked the fugitive disentitlement doctrine to preclude a claimant from demanding that a federal court "service a complaint the claimant initiated." *Id.* at 311; *$45,940*, 739 F.2d at 798 (holding that claimant "waived his right to due process in the civil forfeiture proceeding by remaining fugitive").

In view of these authorities, this Court invoked the fugitive disentitlement doctrine to preclude the *defendant* in *Degen* from resisting the Government's civil forfeiture action while he remained a fugitive from justice. The Ninth Circuit affirmed, citing its earlier decision in *Conforte v. Commissioner*, 692 F.2d 587 (9th Cir. 1982), in which the court invoked the fugitive disentitlement doctrine to preclude a taxpayer, who fled after conviction on criminal tax evasion charges, from prosecuting an appeal of a tax court's determination of tax deficiencies and penalties. *See* 47 F.3d at 1515. Critically, in affirming this Court's decision in *Degen*, the Ninth Circuit explicitly recognized that "[t]he fugitive disentitlement doctrine provides that a fugitive from justice under certain circumstances loses the right to call upon the resources of the court." *Id.*

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In its decision, the Ninth Circuit also reviewed and cited with approval decisions from other circuits in which the fugitive disentitlement doctrine was applied. One such case, which is directly applicable to the facts in the case at bar, was the Fifth Circuit's decision in *Broadway v. City of Montgomery, Alabama*, 530 F.2d 657, 659 (5th Cir. 1976), which upheld the application of the fugitive disentitlement doctrine and granted the City of Montgomery's motion for summary judgment on *the plaintiff's* federal wiretap act claim. In that case, plaintiff failed to appear for sentencing in a criminal proceeding against him in an Alabama state court, and continued to be a fugitive from justice at the time he brought his civil action against the City of Montgomery for illegal wiretapping. *Id.* at 659. The Fifth Circuit held that plaintiff, "a fugitive from justice is not entitled to call on the resources of [an appellate court] for determination of his case." *Id.* The *Broadway* court went on to note that "[i]t is *immaterial that the custody from which he fled is that of another sovereign*." *Id.* (emphasis added).

Numerous cases from other jurisdictions have reached the same result on similar facts. For example, in *In re Prevot*, 59 F.3d 556 (6th Cir. 1995), *cert. denied*, 516 U.S. 1161 (1996), the Sixth Circuit applied the fugitive disentitlement doctrine to a fugitive from a Texas state court theft conviction and the Tennessee probation system who, while living in France, brought suit in Tennessee to regain custody of his children under the International Child Abduction Remedies Act (**"ICARA"**). In reversing the district court's finding that the children should be returned to the custody of the fugitive plaintiff in France, the Sixth Circuit held, in language that is perfectly applicable in the case at bar, as follows:

> In the present case Mr. Prevot is at large and the Texas court has no way . . . to protect its interest . . . . In a practical sense, the only agency with the power to sanction Mr. Prevot is the [Tennessee] district court whose power and authority he himself invoked. Mr. Prevot has flouted the interests of the criminal courts in enforcing his criminal conviction . . . . He has misused the Tennessee probation processes . . . . He has abused the laudable purposes of ICARA by employing it to further his scheme. His fugitivity, and his actions, constitute abuses to which a court should not accede.

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59 F.3d at 567.[7]

Thus, this Court, and the Ninth Circuit in affirming *Degen*, recognized and endorsed authority which explicitly held that a fugitive is disentitled from seeking relief in a federal court as a *plaintiff* in a civil case. Moreover, as these and the other above-cited precedents make clear, the doctrine applies even where the party seeking relief has fled the authority of a different sovereign.

The Supreme Court's opinion reversing and remanding *Degen* does not alter these basic principles one bit. The Supreme Court held, quite simply, that in light of Fifth Amendment due process concerns, it may not be appropriate to invoke the disentitlement doctrine to default a fugitive who is a *defendant* in a civil forfeiture action -- where, as the Court stressed, a district court has other options available to it to ensure that its process and orders are capable of being effectuated. *See* 517 U.S. at 826-28. In so holding, the Court went out of its way to reaffirm its prior holdings that the doctrine may be properly invoked to bar a fugitive from seeking *affirmative relief*. *Id.* at 823 ("We have sustained, to be sure, the authority of an appellate court to dismiss an appeal or writ in a criminal matter *when the party seeking relief becomes a fugitive*") (emphasis added). Further, the Supreme Court cogently noted that ". . . we have said an appellant's escape 'disentitles' him 'to call upon the resources of the Court *for determination of his claims.*'" *Id.* at 824 (emphasis added; citing *Molinaro*, 396 U.S. at 366). Thus, although the Supreme Court rejected application of the fugitive disentitlement doctrine against Degen because of the due process issues involved in

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7/ For cases reaching similar results on similar facts, *see, e.g., Ali v.* Sims, 788 F.2d 954 (3d Cir. 1986) (inmate's Section 1983 action dismissed where, at time of appeal by non-prevailing defendants, inmate had become fugitive from justice; Third Circuit reversed verdict in favor of inmate on other grounds, and would have remanded for new trial, but, instead, court dismissed inmate's claim in light of his fugitive status); *Schuster v. United States,* 765 F.2d 1047 (11th Cir. 1985) (taxpayer action in Florida federal court dismissed where taxpayer was fugitive from indictment issued in California); *Griffin v. City of New York Correctional Commissioner,* 882 F. Supp. 295 (E.D.N.Y. 1995) (former inmate's Section 1983 action based on allegedly inadequate medical treatment dismissed where inmate failed to comply with state parol requirements and was therefore deemed a fugitive from justice). *Seibert v. Johnson*, 381 F. Supp. 277 (E.D. Okla. 1974) (state prison inmate's Section 1983 claim dismissed where, two days after bench trial was completed, inmate escaped from prison and became a fugitive).

defaulting a *defendant* and subjecting his assets to forfeiture without an opportunity to be heard on the merits, the Court nonetheless reaffirmed longstanding authority that the doctrine is properly applied against a fugitive *plaintiff* who seeks affirmative relief from the courts. Critically, the Supreme Court's holding in *Degan* that the fugitive disentitlement doctrine could not be invoked against a civil *defendant* who was a fugitive, did not, in any way, undermine the long line of precedents, including the Ninth Circuit's *Conforte* decision, that the doctrine can and should be invoked where the fugitive is a *plaintiff*.[8]

The foregoing authorities mandate dismissal of Armstrong's complaint here. As noted, there is no question that Armstrong is a fugitive from justice. Thus, he cannot come to this Court as a *plaintiff*, seeking *affirmative* relief, unless and until he obeys the orders of the California courts.

Moreover, wholly apart from this federal jurisprudence respecting the fugitive disentitlement doctrine, this Court, sitting in diversity, should also apply the fugitive disentitlement doctrine to Armstrong's claims as a matter of comity. As noted, because plaintiff has invoked only this Court's diversity jurisdiction, it sits in this case as a Nevada state court. As such, this Court is obliged, as a matter of comity, to give due respect to the judgments and policies of a sister state's courts. *See, e.g., Fox v. Chase Manhattan Corp.*, 11 Del. J. Corp. L. 888, 891 (Del. Ch., Dec. 6, 1985) ("comity . . . demands of this Court due respect for the jurisdiction and processes of the courts of sister states, and vice versa . . . ."). *See also Copren v. State Bar*, 64 Nev. 364, 383, 183 P.2d 833, 842 (1947) (affording comity and full faith and credit to a California judgment suspending attorney's license to practice law in that state, and holding that the California judgment of suspension properly formed the basis, in part, for suspension of the attorney's Nevada license).

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8/ And, as noted, the defendant in *Degan* fled an indictment, not a conviction. Here, by contrast, Armstrong's flight occurred post-conviction. Therefore, Armstrong has not merely shown disrespect for the order he was found guilty of violating, he has also flouted the California court's attempt to enforce compliance with its order by twice convicting Armstrong of contempt.

Nevada state substantive law clearly recognizes and endorses the fugitive disentitlement doctrine. *See, e.g., Arvey v. State of Nevada*, 94 Nev. 566, 567 (1978) (dismissing appeal of defendant who failed to appear and was subject to a bench warrant); *Closset v. Closset*, 71 Nev. 80, 82 (1955) ("We shall not permit [appellant] to avail himself of judicial review while at the same time he places himself beyond reach of the process of the trial court in defiance of its attempts to enforce its judgment"). Thus, because the Nevada state courts (including this Court sitting in diversity[9]) would not allow a fugitive from a Nevada court to bring affirmative claims here, Armstrong, a fugitive from the authority of a sister state's courts, should, as a matter of comity, have no greater right to assert his affirmative claims in the courts of this State. Simply put, if a Nevada state court would invoke the fugitive disentitlement doctrine to preclude a fugitive from a Nevada court from suing in a Nevada court, *a fortiori*, it would not grant access to a fugitive from the courts of a sister state.

It is also beyond dispute that a California court would not allow Armstrong to seek affirmative relief as either a plaintiff or appellant because of his fugitive status. This conclusion is supported by the fact that a California appellate court has already dismissed Armstrong's appeal from the order of permanent injunction because of his flight from that jurisdiction. *See also MacPherson v. MacPherson*, 13 Cal.2d 271 (1939) (a party to action is not entitled to court's aid while standing in an attitude of contempt to state courts' legal orders and processes); *Knoob v. Knoob*, 192 Cal. 95, 96-97 (1923) (dismissing appeal of defendant who fled jurisdiction in violation of child custody order); *Travis v. Travis*, 89 Cal. App.2d 292 (Cal. App. 2d Dist. 1948) (flagrant disobedience of trial court's order and contempt barred plaintiff from seeking appellate review of order entered against him); *Funfar v. Superior Court*, 107 Cal. App. 488, 490-91 (Cal. App. 2d Dist. 1930) (doctrine applied to ban contemnor who sought writ of prohibition barring enforcement of the superior court order against him).[10] Because it is clear that California would refuse Armstrong

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9/ *Klaxon v. Stentor Mfg. Co.*, 313 U.S. 487 (1941).

10/ There is, therefore, no conflict between the public policy of California and the public policy (continued...)

access to its courts as a *plaintiff*, and because it is equally clear that a Nevada state court would bar Armstrong from asserting his claims before it, as a matter of comity this Court, sitting as another court of the State of Nevada, should not grant Armstrong "safe harbor" to bring his claims here.

III. IF THIS COURT DENIES RTC'S MOTION FOR RECONSIDERATION, THE REQUESTED § 1292(b) CERTIFICATION SHOULD ISSUE

It is clear that immediate, interlocutory determination of the fugitive disentitlement issue by the Ninth Circuit will both materially advance the outcome of this case, and will advance the interests of economy and efficiency in that, if RTC is correct in its position respecting application of the doctrine here, then the parties and this Court will be spared the time, trouble and expense of further proceedings in this action -- all of which would be for naught if, after entry of a final judgment here, the Ninth Circuit agrees with RTC's position.

Title 28 U.S.C. § 1292(b), which governs the jurisdiction of the federal circuit courts to entertain interlocutory appeals, provides, in pertinent part, that:

> When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

If this Court rejects RTC's motion for reconsideration, despite the authorities cited and discussed herein, this Court should certify its July 10th Order for immediate interlocutory appeal to the Ninth Circuit because the elements of 28 U.S.C. § 1292(b) are clearly satisfied in this case. *First*, the issue of the propriety of applying the fugitive disentitlement doctrine is a controlling question in this case because application of the doctrine in the manner sought by RTC would completely dispose of the action. *See* 16 Wright, Miller & Cooper, FEDERAL PRACTICE AND

10/ (...continued)
of Nevada, and no reason why principles of comity should not apply here.

PROCEDURE: JURISDICTION 2D § 3930, at 432 (1996) ("[Q]uestions found to be controlling commonly involve the possibility of avoiding trial proceedings, or at least curtailing and simplifying pretrial or trial"). *Second*, as is clearly demonstrated by the above-described authorities, there is, at the very least, substantial ground for a difference of opinion regarding the application of the doctrine in this case. *Third*, immediate resolution of this issue by the Ninth Circuit would materially advance the ultimate termination of the litigation because, if the Ninth Circuit agrees with RTC's interpretation of the doctrine and its application to this case, such determination would compel dismissal of Armstrong's action altogether.

Accordingly, RTC respectfully submits that, if this Court denies its motion for reconsideration, this Court should certify its July 10th Order for immediate interlocutory appeal pursuant to 28 U.S.C. § 1292(b).

IV. ALL PROCEEDINGS IN THIS COURT SHOULD BE STAYED PENDING THE NINTH CIRCUIT'S DETERMINATION ON APPEAL

Finally, if this Court certifies its July 10th Order for interlocutory appeal, RTC requests that this Court also stay all proceedings in this action pending the Ninth Circuit's determination of the appeal. Where an interlocutory appeal is taken pursuant to 28 U.S.C. § 1292(b), proceedings in the district court are not automatically stayed. *See* 28 U.S.C. § 1292(b); *O'Brien v. Avco Corp.*, 309 F. Supp. 703, 704 (S.D.N.Y. 1969). However, where the determination of the appeal may dispose of the entire suit, a stay is plainly warranted. *See, e.g., O'Brien*, 309 F. Supp. at 704; *Wieboldt Stores, Inc. v. Schottenstein Stores Corp.*, 1989 WL 51068 at *2 (N.D. Ill., May 5, 1989). This is because a stay will, quite obviously, serve to "protect the parties from the expense of continued litigation when the issues [to be appealed] are of such magnitude and importance that reversal would terminate or substantially narrow the scope of the proceedings." *Weiboldt Stores*, 1989 WL 51068 at *2.

As noted, *supra*, the reversal of that portion of this Court's July 10 Order respecting application of the fugitive disentitlement doctrine would, in fact, result in the complete dismissal of

Armstrong's lawsuit. As such, all further proceedings in this Court should be stayed pending the resolution of defendants' interlocutory appeal.

CONCLUSION

Based upon the foregoing, RTC respectfully requests that this Court grant its motion for reconsideration of the July 10th Order or, in the alternative, certify the July 10th Order, pursuant to 28 U.S.C. § 1292(b), for interlocutory appeal to the Ninth Circuit. If this Court so certifies the July 10th Order, RTC respectfully submits that this Court should also issue a stay of all further proceedings in this Court pending the Ninth Circuit's determination of the interlocutory appeal.

Dated this 24th day of July, 1998

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PROOF OF SERVICE BY MAIL

I, Sylvia Baldemor, declare:

I am employed in the City of Reno, County of Washoe, State of Nevada by the law offices of Hale Lane Peek Dennison Howard and Anderson. My business address is 100 W. Liberty Street, Tenth Floor, Reno, Nevada 89501. I am over the age of 18 years and not a party to this action.

I am readily familiar with Hale Lane Peek Dennison Howard and Anderson's practice for collection and processing of its outgoing mail with the United States Postal Service. Such practice in the ordinary course of business provides for the deposit of all outgoing mail with the United States Postal Service on the same day it is collected and processed for mailing.

On July 24, 1998, I served the foregoing **DEFENDANT RELIGIOUS TECHNOLOGY CENTER'S MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, FOR CERTIFICATION PURSUANT TO 28 U.S.C. § 1292(b) AND FOR STAY OF ALL PROCEEDINGS IN THIS COURT PENDING APPEAL** by placing a true copy thereof in Hale Lane Peek Dennison Howard and Anderson's outgoing mail in a sealed envelope, addressed as follows:

George W. Abbott, Esquire
George W. Abbott, Chtd.
2245 B Meridian Boulevard
P.O. Box 98
Minden, Nevada 89423

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on July 24, 1998.

Sylvia Baldemor